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No. 82-787

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner,

v.

GREAT COASTAL EXPRESS, INC.,
Respondent.

On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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The Background Of The Union's Effort To Nullify A Money Judgment Rendered Against It And Paid By It Years Ago

This case arose out of a strike

by the Union[1], against the Company[2], which occurred twelve years ago[3]. Upon instituting suit, the Company alleged two separate and distinct causes of action against the Union - as the Court of Appeals has repeatedly stressed in its successive decisions in this case - namely: "(1) damage to property and equipment caused by the Union violence; and (2) lost business caused by illegal secondary boycotting" on the part of the Union[4].

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[1]Now the Petitioner.

[2]Now the Respondent.

[3]Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1351 (4th Cir. 1982).

[4]Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1351 (4th Cir. 1982) and Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 511 F.2d 839, 841 (4th Cir. 1975).

With regard to the first cause of action, the Court of Appeals has likewise emphasized in each of its decisions that the "claim" as to "union violence" was "eliminated from the case by directed verdict at the close of Great Coastal's case in chief"[1] in the District Court.

A verdict against the Union, as to liability and damages, was then rendered by the trial jury upon the cause of action for illegal secondary boycotting[2]. That verdict was thereafter set aside by the trial court as to the amount of

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1351 (4th Cir. 1982) and Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 511 F.2d 839, 841 (4th Cir. 1975).

[2] Idem.

damages awarded by the jury, and the issue of damages was later tried before a new jury. The verdict of the second jury as to damages was accepted by the District Court, and judgment was thereupon rendered against the Union upon the cause of action for unlawful secondary boycotting. That judgment "was affirmed as to both liability and damages" by the Court of Appeals[1], and this Court thereafter denied certiorari[2].

Some two and a half years after the Union had paid this judgment, it filed

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1351 (4th Cir. 1982) and Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 511 F.2d 839, 847-848 (4th Cir. 1975).

[2] International Brotherhood of Teamsters v. Great Coastal Express, Inc., 425 U.S. 975, 96 S.Ct. 2176, 48 L.Ed.2d 799 (1976).

a Motion in the District Court seeking to reopen the case and vacate the judgment and recoup the payment which it had made thereunder - the ground of such Motion being that the Union had learned that certain of the evidence put forward against it at the original District Court trial had been false.

At a supplemental hearing on this Motion before the District Judge, without a jury, it developed that the trial evidence which the Union showed to have been false was a part of the evidence on the cause of action for violent damage to the Company's property and equipment - which cause of action, as hereinabove noted, had been wholly dismissed and eliminated from the case at trial, and on which neither a verdict nor a judgment had been rendered

against the Union.

Yet, with regard to illegal secondary boycotting - the only subject or cause of action as to which verdict and judgment had been rendered against the Union - the Union did not show, and has never shown or purported to show, any falsity of evidence whatsoever.

The Respondent will hereinafter return to this basic fallacy in the Union's effort to vacate the second boycott judgment, but it may be that the Court, at this point, would wish to have a delineation as to just what the supplemental hearing on the Union's Motion did show with regard to false evidence.

The Evidence Upon Which The Union Seeks To Nullify The Judgment

On the cause of action for

violent damage to the Company's property and equipment during the strike, the trial evidence had depicted some twenty episodes or groupings of such violence. Out of all this evidence of damage by violence, the supplemental hearing on the Union's Motion showed only one instance of falsity in the trial evidence. This became referred to as the New Kent incident.

At the supplemental hearing, Robert Seward, a former truck driver for the Company, testified that one day during the strike, after a conversation with a Company supervisor, William Funai, he drove his truck out on a country road and got out and threw a brick against the windshield of the truck and dented the metal siding of the truck trailer with three shots from a 22 caliber handgun.

Seward stated that he then drove his truck to a nearby restaurant and called the Company Manager, Edward Flinn, and "told him a lie" about unidentified persons having damaged his truck, and later made a written statement to the same effect at the Company office[1]. There was no evidence that Flinn had any inkling whatever that this incident had been concocted by Seward and Funai, or by either of them. Instead, Seward himself testified that Flinn knew "nothing about" any such[2].

Funai, who held the title of "Dispatcher or Terminal Manager" and also drove trucks, testified upon deposition,

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[1] Joint Appdx., upon the Union's second appeal to the Court of Appeals, pp. 533, 579.

[2] Idem, p. 574.

which was embodied in the record of the supplemental hearing, that nobody in the management of the Company ever told him "to have any employee damage any" of the "Company's equipment"[1]. Although Funai, at the supplemental hearing, declined to answer various questions on the matter, upon the ground that his answer might tend to incriminate him, he further testified specifically that he never told "any one" in the management that he "had advised any employee to sabotage any equipment" or that any employee "had sabotaged" any equipment[2].

At the original trial, in

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[1] Joint Appdx., upon the Union's second appeal to the Court of Appeals, pp. 338, 341.

[2] Idem, pp. 645-646.

enumerating incidents of violence from a list thereof, and having had no intimation of anything suspicious about this particular incident, the Company's attorneys had asked Seward the following routine questions about it and had received the following casual answers:

"Q. All right, now, in New Kent County in October, 1970, did you have an incident in which one of your trucks was damaged that you were driving?

A. I don't remember the county to be exact. I was enroute to West Point to pick up a load of paper. This is when I was alone.

Q. What happened?

A. Well, a brick came inside

> the truck on the passenger side and some dents was in front of the trailer, but the State Police described it as bullet dents"[1].

Likewise, in the Company's brief to the Court below, upon the Company's alternative appeal from the trial Court's dismissal of all violence claims, there is to be found, in the description of the evidence relating to violence, only a single reference to the New Kent incident as follows:

> "On one occasion a brick was thrown at passenger side of the windshield" of "Robert Seward's truck"[2].

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[1]Joint Appdx., upon the Union's second appeal to the Court of Appeals, pp. 116-117.

[2]Company's Brief upon the original appeal to the Court of Appeals, p. 11.

In the Petition's statement of "Questions Presented" caustic reference is made to the Company's "sealing the silence of the perpetrators" of the false evidence against the Union "through payoffs"[1]. In the body of the Petition, this is amplified by references to Seward as the "employee responsible for the Company-inspired violence" and to the Company's paying "$12,000.00 to Funai", "one of its managers who had ordered" the New Kent "violence"[2]. Yet the only evidence is that nobody in the Company's management or supervision knew anything about the fabrication of the New Kent incident, other than the non-supervisory employee Seward and the supervisor Funai.

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[1]Petition, p. "i".

[2]Petition, p. 9.

The Court below, in commenting on the $12,000.00 payment to Funai, observed that:

> "This payment was ostensibly part of the Company's profit-sharing plan; however, Funai was not employed by the Company at the time of the recovery of the IBT judgment, and therefore payment of this share to Funai was contrary to Company policy regarding profit-sharing"[1].

As to this, the Company respectfully calls attention to the following circumstances which are of record. The Company's written profit-sharing commitment to its supervisory employees,

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1353 (4th Cir. 1982).

entered into long prior to any of the matters involved in this case, required the $12,000.00 payment which was made to Funai, regardless of the fact that he was not employed by the Company when he received it, and such payment was therefore not "contrary to Company policy regarding profit-sharing" but was in accord therewith.

Moreover, it is to be noted that Funai received no special treatment in this regard, for Edward Flinn, the Company Manager, as to whom there has never been any claim of improper action or conduct against the Union, received the same profit-sharing at the same time as Funai - though he, like Funai, did not remain in the Company's employment throughout the duration of the strike.

Such is the evidence pertaining

to the New Kent incident. In calling for the undoing of the years of judicial process in this case - and the reversal of verdicts twice rendered, and decisions twice arrived at, and judgments twice entered in the District Court, and twice affirmed in the Court of Appeals - the Union presents this incident as the one and only instance of falsity in the evidence on the cause of action for violent damage by the Union to the Company's property.

As has been hereinabove stressed, however, with regard to the Company's cause of action for illegal secondary boycotting - the only cause of action upon which judgment was rendered - the Union has not at any time made any showing, nor indeed made any claim, of any false evidence whatsoever.

The Evidence Upon Which The Union Seeks To Rely Cannot Constitute A Basis For Nullifying The Judgment Rendered Against The Union

It is submitted that the Union's effort to vacate the judgment in this case defies simple reasoning and common sense. Thus: -

(a) The Union was sued on two distinct and different causes of action, namely, (1) violent damage to the Company's property and (2) illegal secondary boycotting.

(b) The cause of action against the Union for violent damage was dismissed and eliminated from the case by the trial court for failure to "tie to" the International Union.

(c) Judgment was rendered

against the Union on the cause of action for illegal secondary boycotting.

(d) Later it was determined that certain of the evidence against the Union, on the previously dismissed cause of action for violence, was false.

(e) There is no showing or claim that any of the evidence on the cause of action for illegal secondary boycotting was false or defective in any sense.

Conclusion (according to the Union):

By reason of "d", the judgment for illegal secondary boycotting must be vacated.

It is submitted that this can hardly be deemed logical or sensible. For two reasons, the false evidence on violence cannot have invalidating effect upon the secondary boycott judgment: (1) Such false evidence on the violence cause of action had no relation to the secondary boycott cause of action; (2) Such false evidence, along with all other evidence on violence, was wholly dismissed, and removed from all consideration in the case, prior to the rendering of any verdict or judgment.

It is further important to note that the judgment on secondary boycotting - the only judgment rendered and the only judgment under attack - was fully supported by the evidence pertaining to such boycotting. This judgment fully

stands without any aid or support from any false evidence on violence or any evidence at all on violence, whether false or true. This is undeniable in this case, and the Court of Appeals has repeatedly stressed it.

> "We should say here, and we emphasize, that the Union does not contest the fact that there was evidence from which a jury could find an illegal secondary boycott. Indeed, the matter is admitted to be clearly a jury question.
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> . . .
>
> "From the testimony and other evidence recited, it goes without saying that the jury had abundant evidence to find that IBT had induced, encouraged, threatened, or coerced employees of Great

> Coastal's customers to withhold their labor from their employers, with whom they had no dispute, and that IBT so acted for the purpose of achieving the unlawful objectives set out in the National Labor Relations Act, §8(b)(4), 29 U.S.C. §158(b)(4)."
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> Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 511 F.2d 839, 842, 844 (4th Cir. 1975)

Reiterating this, in its second decision, the Court of Appeals pointed out that:

> ". . . [T]he [prior] opinion of the court observed that 'the union does not contest the fact that there was evidence from which a jury could find an illegal secondary boycott' . . . and

> further, 'it goes without saying that the jury had abundant evidence' to find that IBT had committed unlawful secondary boycotting.
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> . . .
>
> "We have already observed, in the prior decision of this court quoted above, that there was abundant evidence of damage caused by the secondary boycotting alone."
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> Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1352, 1357, ft. no. 3 (4th Cir. 1982)

Yet the Union does not hesitate to declare in its Petition to this Court that this secondary boycott judgment is "a fraudulently obtained" judgment[1].

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[1] Petition, p. 3.

How can the Union now unequivocally assert to this Court that this secondary boycott judgment was "fraudulently obtained", when the Court of Appeals, in two successive decisions, has itself unequivocally ruled with regard to this identical secondary boycott judgment that - "the jury had abundant evidence to find that IBT had induced, encouraged, threatened, or coerced employees of Great Coastal's customers to withhold their labor from their employers, with whom they had no dispute, and that IBT so acted for the purpose of achieving the unlawful objectives set out in the National Labor Relations Act" - and that "there was abundant evidence of damage caused by secondary boycotting alone" - and that "the Union does not contest" this fact"?

The Court of Appeals further emphasizes this fundamental aspect of the matter by pointing out that "the particular element that is lacking in this case is a good defense to the action" for secondary boycotting, which "the IBT was prevented from discovering or asserting because of" the false evidence shown with respect to the cause of action for violence - and that "both parties recognize that the judgment under attack here is the secondary boycott judgment." The Court goes on to say that "the Union has not proferred any defense to liability" which the false evidence on the violence cause of action "precluded" the Union "from asserting" - and the Court concludes that "relief was properly denied on this

ground as well"[1].

Thus, the Court of Appeals specifically confirms the Company's contention that falsity in certain evidence against the Union in the violence cause of action is no ground for nullifying the secondary boycott judgment, because the Union did not show that such false evidence precluded the Union from presenting defense which it otherwise could and would have presented against the secondary boycott cause of action.

This Court itself has so ruled:

> "[I]n any cause, to justify setting aside a decree for fraud, whether extrinsic or intrinsic, it

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1358 (4th Cir. 1982).

must appear that the fraud charged really prevented the party complaining from making a full and fair defense. If it does not so appear, then proof of the ultimate fact, to wit, that the decree was obtained by fraud, fails. That is the case here."

Toledo Scale Company v. Computing Scale Company, 261 U.S. 399, 421, 43 S.Ct. 458, 67 L.Ed. 719, 728 (1922)

The Union's Effort To Nullify The Judgment Is Also Barred By The Time Limit Prescribed In The Federal Rules Of Civil Procedure

Rule 60(b) of the Federal Rules of Civil Procedure provides that a motion to vacate a "final judgment" on account of

"fraud" must be made "not more than one year after the judgment . . . was entered". The Union did not file any such motion within this prescribed time limitation.

The same Rule contains a provision that it imposes no time limit upon a motion "to set aside a judgment for fraud upon the court". The Union contends that it escapes the one year time bar of Rule 60(b), because it is indeed here seeking to vacate the judgment "for fraud upon the court". Both the District Court and the Court of Appeals ruled that there has not been any showing of "fraud upon the court" in this case[1].

Obviously, it is a premise of Rule 60(b) itself that not all fraud

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1355-1358 (4th Cir. 1982).

occurring in the course of a litigation is "fraud upon the court", otherwise the distinction made in the Rule would be meaningless. The Court of Appeals, in its latest decision in this case, thoroughly examined and discussed this question and the authorities bearing upon it, and concluded that

> "Thus, 'fraud on the court' is typically confined to the most egregious cases, such a bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged".
>
> . . .
>
> "In this light we cannot say that the fraud in this case presents a deliberate scheme to

directly subvert the judicial process, sufficient to constitute fraud on the court".

. . .

". . . [C]ourts confronting the issue have consistently held that perjury or fabricated evidence are not grounds for relief as 'fraud on the court' ". Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1356, 1357 (4th Cir. 1982), and authorities there cited

The Court of Appeals also considered the question of an independent action in equity, referred to in Rule 60(b) and likewise discussed in the Petition, and "for many of the same reasons that apply to fraud on the court" ruled against accepting a showing simply of "perjury and false testimony" as being

"grounds for relief in an independent action"[1].

The Union's Petition discusses at length the intricacies of the decisions, in the courts of appeals and in this Court, which have struggled with distinctions and gradations between "fraud" and "fraud upon the court", and between "intrinsic" and "extrinsic" fraud - and declares them to be thoroughly confusing.

There is no occasion in this case, however, for the Court to wade through that quagmire. Even if the false evidence in the case were denominated "fraud upon the court" - which the District Court and the Court of Appeals have held it was not - still it cannot be ground for

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[1] Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1357-1358 (4th Cir. 1982), and authorities there cited.

vacating the judgment here, because - as has been hereinabove clearly demonstrated - such false evidence related to a cause of action for violence which was eliminated from the case, but was in no way pertinent to the secondary boycott cause of action upon which judgment was rendered.

It is respectfully submitted that in the end it should not be overlooked that this judgment, which the Union is seeking to nullify, does represent compensation for injury caused by deliberate violations of Federal law which have been undeniably proved upon "abundant" and unchallenged evidence.

Upon all of the foregoing, the Respondent respectfully submits that the

Petition for Writ of Certiorari should be denied.

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Statement Pursuant To The Court's Rule 28.1

The Respondent, Great Coastal Express, Inc., has no parent, subsidiary or affiliate companies.